No. 86-1547 (3)

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

ANNE B. PARKS,

Petitioner,

v.

MICHIGAN EMPLOYMENT SECURITY COMMISSION
and DETROIT PUBLIC SCHOOLS,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Michigan

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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May 8, 1987

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Pursuant to Rule 22.5 of the Rules of this Court, the petitioner files this short Reply Brief in Support of her Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan.

In its effort to persuade this court to deny the petition, the respondent Detroit Public Schools (Employer) (1) argues that petitioner's claim in this unemployment compensation case is precluded by a prior judgment and

statements of petitioner's counsel regarding the validity of her discharge; and (2) incorrectly states the holdings of this Court in certain other unemployment compensation cases. Neither statements of counsel nor prior litigation foreclose Dr. Parks' claim that she was unconstitutionally denied unemployment compensation by the State of Michigan.

This case questions whether an employee may be twice penalized for the exercise of First Amendment rights. Dr. Parks offered to pay the contested union fees into an escrow account, but refused to pay them to the union until a neutral decisionmaker determined the appropriate amount of her agency fee. She was discharged for this refusal and that discharge was the first penalty imposed upon her. All the litigation over the propriety of that discharge, any failure to raise certain claims, any admissions of counsel regarding her discharge all deal with the first penalty imposed on Dr. Parks.

This case involves the imposition of a second penalty: denial of unemployment compensation. While prior litigation and statements of counsel regarding Dr. Parks' discharge provide necessary background, they in no way foreclose this Court's decision on the propriety of imposing a second penalty upon Dr. Parks for her refusal to pay union fees that were not proven to represent only her fair share of the union's bargaining costs.

This case, just like *Hobbie v. Unemployment Appeals Commission of Florida*, _____ U.S. _____, 108 S. Ct. _____, 94 L.Ed.2d 190 (1987), *Thomas v. Review Bd. of Indiana*, 450 U.S. 707 (1981) and *Sherbert v. Verner*, 374 U.S. 398 (1963), raises the question of whether a state may deny unemployment compensation to an employee

who is out of work because of the exercise of First Amendment rights. There can be no dispute that Dr. Parks' discharge came about because of the exercise of her First Amendment right to stand apart from a union, and her refusal to support financially its political activities. *Chicago Teachers Union, Local 1 v. Hudson*, ____ U.S. ____, 106 S. Ct. 1066, 1073-74 (1986). What she subsequently did or did not do to overturn that discharge is not relevant to this case. What is important is whether, given the reason for her discharge, the State of Michigan may now impose a second penalty upon her by denying unemployment compensation benefits.

In cases like *Hobbie*, *Sherbert* and *Thomas*, the argument can be made that the employees had no constitutional claim against their private sector employers to work which did not violate their religious beliefs. *See*, *Otten v. Baltimore & Ohio Railway Co.*, 205 F.2d 58 (2d Cir. 1953). Whatever the merits, if any, of their constitutional claims on the work issue, this Court independently examined their constitutional claims to unemployment compensation. So also in this case the Court should independently examine petitioner's unemployment compensation claim.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court to grant her petition.

Respectfully submitted,

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